Crl.A. 81/2001
BEFORE
THE HON'BLE MR. JUSTICE D.BISWAS
THE HON'BLE MR. JUSTICE A.HAZARIKA
D.Biswas, J

The learned Sessions Judge, Tinsukia on conclusion of trial in Sessions Case No. 19(T) of 1997 convicted the appellants Lakhan Bag and Nanu Benjuwar under Section 302 IPC and sentenced them to imprisonment for life.

2. One Sri Jiten Ekka of Ouguri Village lodged an ejahar before the Officer-in-Charge, Digboi Police Station on 14.10.96 informing that on 13.10.96 around 8.30 p.m. while Titang Ekka was sitting in the house of Sibi Nath Bhijuar, accused Lakhan Bag called him away and on the road between the houses of Manti Bhijuar and Samary Bhijuar, he along with accused Nanu killed Titang Ekka by hacking him with a dao.

3. On receipt of the aforesaid ejahar, Digboi P.S. Case No.190/96 under Section 302/34 IPC was registered. The police after registration of the case took up investigation, visited the place of occurrence, seized the incriminating materials, recorded the statement of the witnesses and on completion of investigation, submitted chargesheet against the appellants under Section 302/34 IPC.

4. On commitment by the learned Magistrate, the learned Sessions Judge framed charge against the appellants under Section 302/34 IPC. The charges were read over and explained to the appellants, to which they pleaded not guilty and claimed to be tried. From the trend in the cross-examination as well as the answers given by the appellants in course of their examination under Section 313 CrPC, the defence case appears to be of complete denial.

5. The learned Sessions Judge examined as many as seven witnesses produced by the prosecution. The defence did not adduce any evidence. After examination of the accused-appellants under Section 313 CrPC and hearing the argument, the impugned judgment was pronounced convicting and sentencing the appellants as mentioned hereinbefore.

6. P.W.7 Dr. R.K. Gogoi performed the post mortem examination on the dead body of Titang Ekka. The injuries found by him on the person of deceased Titang Ekka are as follows :

Injuries : 1. A horizontally placed incised wound present on upper part of the neck on anterior and right lateral side of the neck measuring 16 x 3 cm which incised the trachea, oesophagus and third cervical vertebrae and spinal cord.

2. A horizontally placed incised wound present on lower part of the neck on posterior and left lateral side of the neck measuring 20 x 4 cm which incised the 6th cervical vertebrae and spinal cord.

3. A horizontally placed incised wound present on back of the right shoulder measuring 6 x 3 cm which incised the muscle of the back of the shoulder

4. A horizontally placed incised wound present on back of the left shoulder measuring 16 x 3 cm which incised the left scapula. .

In the opinion of the doctor, the death was due to shock and haemorrhage resulting from the ante mortem injuries sustained by the deceased. The doctor further opined that injury No. 1 and 2 are individually sufficient to cause death. The evidence of the Medical Officer read with the inquest report (Exhibit-1) conclusively prove that Titang Ekka died of the ante mortem injuries sust

ained by him.

7. There is no eye witness in this case. The learned Sessions Judge convicted the accused persons relying on the circumstances evinced by P.W.1 and P.W.3. P.W.1 Smt. Malati Binjuwar in her evidence stated that one day she visited the house of deceased Titang. Both of them came back to her house. While Titang was sitting in her house, accused Lakhan called him away. Next morning she came to know that Titang did not return home. Titang's dead body was found lying by the side of the road near the house. She saw the dead body with cut injuries. She further stated that after 15/20 minutes of Titang's departure with accused Lakhan, accused Nanu came and told her that Titang has been killed and she should not raise any hulla or else she would be killed.

8. From the evidence of P.W.1, we find that deceased Titang was taken away by accused Lakhan from her house and within 15/20 minutes of their departure, accused Nanu reported to her that Titang has been killed. This means that accused Lakhan was seen in the company of the deceased immediate before his death.

9. P.W.3 Kanuram Binjuwar is the brother of accused Nanu. He stated that the occurrence took place during the night. He was sleeping at his house. Lakhimoni aroused him and told him that a man was lying there and groaning. He came out and saw the body of Titang by the side of the road near his house with his neck cut. He reported the matter to the parents of Titang. Titang's younger brother Naresh came to the place of occurrence. Having seen the dead body, he left the place. The witness spent the whole night with a lamp. While coming out with the lamp, accused Nanu came with a blood stained dao in his hand. Nanu wanted to hand over the dao to this witness. On being refused, Nanu rebuked him and left. Thereafter, police came and prepared the inquest report, Exhibit-1. Exhbit-1(1) is the signature of this witness. Police also seized the dao vide Exhibit-2. Exhibit-2(1) is the signature of this witness.

10. P.W.1 and 3 have been subjected to cross-examination but their evidence stands unrebuted. From their evidence it appears that the deceased was in the company of accused Lakhan immediate before his death and accused Nanu was seen with a blood stained dao 15/20 minutes after the occurrence. In addition to this witness, we also find from the evidence of P.W.2 Smt Lakhi Binjuwar that in the night she felt that people were running outside. She came out and saw accused Lakhan going in a run. The witness called Lakhan whereupon he told her that he had cut the neck. She also heard groaning of human being from a distance of about 25 yards.

11. The circumstances appearing from the evidence of the above three witnesses, in our opinion, form a chain leading to the irrefutable conclusion that both the accused had in pursuance of common intention, caused the death of Titang by causing multiple injuries on his person by sharp cutting weapon. The evidence of other witnesses are not of much significance. They came to the place of occurrence after hearing about the occurrence.

12. For reasons discussed above, particularly on the basis of the evidence of P.W.1,2 and 3, we are not inclined to interfere with the judgment passed by the learned Sessions Judge.

13. In the result, we dismiss the appeal.

14. The learned amicus curiae be pad a sum of Rs. 3000/- as fees for rendering assistance to the Court.